

EXHIBIT G

1 STATE OF ILLINOIS)
2) SS.
2 COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - CRIMINAL DIVISION

4 THE PEOPLE OF THE STATE)
5 OF ILLINOIS,)
6 Plaintiff,)
7 vs.) No. 93 CR 1873(01)
8 ARMANDO SERRANO and) 93 CR 1873(03)
9 JOSE MONTANEZ,)
10 Defendants.)

11

11 REPORT OF PROCEEDINGS had at the hearing
12 of the above-entitled cause before the HONORABLE
13 MAURA SLATTERY BOYLE, Judge of said court, on the
14 15th day of May, 2013.

15 PRESENT:
16 HONORABLE ANITA M. ALVAREZ,
State's Attorney of Cook County, by:
17 MR. JAMES PAPA, MS. CELESTE STACK and
MR. KURT SMITKO
18 Assistant State's Attorneys,
appeared on behalf of the People;

19 MS. JENNIFER BONJEAN
20 appeared on behalf of the Defendant Armando
Serrano.

21 MR. RUSSELL AINSWORTH and 7-11 CAITLIN BROWN,
22 appeared on behalf of the Defendant Montanez.

23 Denise A. Gross, CSR# 084-003437
Official Court Reporter
2650 S. California, Room 4C02
24 Chicago, Illinois 60608

1 that it must be yes. It has to be yes. This is an
2 extraordinary case. No case like this has come
3 before this Court.

Your Honor when Mr. Vargas was killed that day, it tore his family apart, and I understand the need to have justice done for his case. However, I submit to the Court that there are two other families that were destroyed as well when Mr. Montanez and Mr. Serrano were convicted. And there is no need to -- there's no need to multiply the tragedy that occurred to the Vargas family by repeating the injustices to Mr. Montanez and Mr. Serrano's families. So, your Honor, we ask that you do justice and we ask that you vacate the convictions against Mr. Montanez and Mr. Serrano.

17 | THE COURT: Thank you, Mr. Ainsworth.

18 Ms. Stack?

OPENING STATEMENT

BY MS. STACK:

I don't want to say anything in these remarks
that are too obvious, but there seems to be in
these statements a lot of self-serving denial of
basic facts about our system. These gentlemen had

1 every constitutional right afforded to anyone who
2 becomes a suspect and arrested. This is not a
3 trial. They are not here for the first time. They
4 weren't denied access to the courts. They weren't
5 denied access to effective counsel. The names in
6 these transcripts are some of the most experienced
7 attorneys in this building. **These gentlemen are**
8 **guilty of these murders.** There was plenty of
9 evidence to more than prove our burden beyond a
10 reasonable doubt. There's the surviving widow who
11 saw them the night before they murdered her husband
12 because her husband made the mistake of showing a
13 wad of cash in a gas station. They followed the
14 family home, came back, sat on the place and when
15 he went to work at 5:00 in the morning, a good
16 family man, a young family, two young sons, you
17 know, hard-working man that had been at the same
18 place of employment for 12 years and he's up at the
19 crack of dawn, before Dawn, going to work, and
20 **these muts who want money --**

21 MS. BONJEAN: Objection.

22 THE COURT: Sustained.

23 MS. STACK: I apologize.

24 THE COURT: Everybody, please. I am going to

1 remind you again, the Court's approach --

2 MS. STACK: I apologize.

3 THE COURT: Everyone, please remember that I
4 demand, not only for the Court, but amongst each
5 other, professional civility. Continue on.

6 MS. STACK: Your Honor, I apologize.

7 But the bottom line, the facts of this
8 record that were proven at the trial, that they
9 already had showed that they were in a gang. That
10 they robbed people. They took their money and they
11 bought drugs. And what happened was -- what the
12 law enforcement officers knew -- was that the
13 victim, Rodrigo Vargas, went to his job that
14 morning, and he -- the neighbor lady saw him out
15 there -- a number of people heard the gun shots at
16 5:30 a.m. There's a school across the street. A
17 number of people in the neighborhood heard 6 or 8
18 gun shots. The victim was shot five times, I
19 believe. At least four. And the neighbor lady,
20 Anna Valez, who also baby-sat, looked out again
21 later, unfortunately no one in that neighborhood
22 thought much of hearing gun shots -- it was a
23 common occurrence -- and when she looked out at
24 7:00 a.m. and saw that Rodrigo's van was still

1 there, she knew something was wrong, because he
2 normally ran the van for a few minutes and then
3 left for work. She went up. She looked in and saw
4 his dead body inside his van clutching the pull-out
5 radio. That radio they tried to take from him. He
6 fought them and they shot him, and left him there
7 in the street to die. But nobody knew that.
8 Nobody knew what happened other than Rodrigo was
9 found shot in the van. And nobody knew that he had
10 been followed the night before. And the case had
11 basically stopped.

12 But four months later Francisco Vincente
13 was in the State's attorney's office in one of our
14 offices talking to Assistant State's Attorneys
15 because, yes, he had a number of armed robberies
16 and he was cooperating with the State's Attorney's
17 Office. He was trying to cut himself a deal. And
18 that's the thing about this case, Francisco
19 Vincente at trial was cross-examined by a number of
20 experienced attorneys, and the thing about
21 Francisco Vincente is, he certainly is who he is,
22 and he also, like the defendants, was an armed
23 robber who preyed upon people so he could buy
24 drugs --

1 MS. BONJEAN: Objection, your Honor.

2 Counsel --

3 THE COURT: Overruled. This is argument.

4 Continue on.

5 MS. STACK: The action, the evidence clearly
6 shows --

7 MS. BONJEAN: It's inadmissible.

8 THE COURT: Counsel, continue on.

9 MS. STACK: The actions and evidence shows what
10 this gentlemen did and do. Vincente testified at
11 length about it, and when he was talking to them
12 about another case, and all of this is in the
13 record, all of this was brought out in front of the
14 jury. Nobody tried to portray Vincente as anything
15 other than who he is.

16 MS. BONJEAN: Objection, your Honor, misstating
17 the record.

18 THE COURT: Ms. Bonjean, this is argument. I
19 have afforded you the opportunity and afforded
20 Mr. Ainsworth. Ms. Stack, continue.

21 MS. STACK: And the record will bare that out.

22 MS. BONJEAN: No, it won't.

23 MS. STACK: What Vincente remembered was a few
24 hours after the murder, he ran into the three

1 defendants who he knew, and they were hanging out
2 on the corner in their territory, and the three of
3 them were arguing because they were mad that one of
4 them had botched the robbery by killing the victim
5 and forcing them to flee without the proceeds. And
6 that's when Vincente found out something that no
7 one else knew, he found out that they had seen the
8 young family at a gas station the night before, and
9 when one of the defendants got out and went into
10 the gas station, Mr. Vargas made the simple
11 physical action that lead to his death. He took
12 his hand out of his pant's pocket with a big wad of
13 cash. He had over \$350 in his hands in a knot of
14 money as described by his wife, and they saw that
15 money.

16 Now, no one put that together until four
17 months later, Francisco Vincente did. And that was
18 the beauty of his testimony. As unbeautiful as he
19 was, with all his armed robberies, and again,
20 nobody -- that was the first thing he was asked
21 about -- the jury, the Judge, knew he had not one,
22 not two, but four cases pending. But it didn't
23 matter because when you're prosecuting people of
24 this ilk, people that have information are also

1 people of this same ilk, and that's what happened
2 here. And it basically was a lucky break that got
3 some measure of justice for this family. It
4 wouldn't bring the father back. It wouldn't change
5 what happened to him, but he made the unfortunate
6 mistake of flashing a wad of cash in front of these
7 men. And when the victim returned to his car, it
8 also happened that the defendant's car, which a lot
9 of people talked about and identified, was parked
10 in a 45-degree angle blocking the family from
11 leaving the gas station. So you have a lot of
12 corroboration in the record. There's a lot of
13 evidence in the record. There's other ID's in the
14 record.

15 MS. BONJEAN: Objection.

16 THE COURT: Overruled.

17 MS. BONJEAN: Misstating the record. Complete
18 lies.

19 THE COURT: Ms. Bonjean.

20 MS. BONJEAN: It's complete lies.

21 THE COURT: I am going to impose sanctions.

22 Continue on.

23 MS. STACK: Because they had blocked Rodrigo's
24 van in; his wife testified that when he got in the

1 car, the three men, there were two still in the
2 car, one was in the gas station and they were
3 blocking his exit from the vehicle, from the gas
4 station. He honked the horn, Ms. Vargas testified
5 that then her husband blasphemed. He swore. Not
6 at them, but inside the privacy of his van. He
7 swore. He was angry she said because he was
8 blocked in by these people. So both he and his
9 wife were focused on the defendant's car in the gas
10 station that night. Then one of them came out,
11 they moved the car, and they -- and the Vargas'
12 left the gas station. And Rodrigo was still angry,
13 and they both noted that the defendant's vehicle
14 followed them out of the gas station and down the
15 street for a ways, and she said at one point she
16 stopped looking out the window. She wasn't aware
17 whether they followed them all the way home. But
18 we know from Francisco Vincente that they did, and
19 when they saw where the family stopped and exited,
20 they marked the place, and they went back. And
21 that unfortunate display of cash in a gas station,
22 lead to this case.

23 And, again, from all the arguments that
24 sound like trial closing arguments, you would think

1 that we've never been through this process, but we
2 have. These men asserted their rights. They had
3 counsel. They had motions, trial, et cetera. And
4 they had direct appeals. We have a wonderful
5 criminal justice system here, and in Illinois we
6 have extensively extended it through the
7 post-conviction litigation. Your Honor is well
8 aware of the stages of post-conviction litigation.
9 How it works is inmates are allowed to start their
10 own litigation from prison. And if you make an
11 actual innocence claim, there's no statute of
12 limitation, and because the legislature anticipated
13 that inmates would be filing their own petitions
14 without the help of lawyers and from prison, they
15 get a first stage, where the State does not
16 participate and the Judge reviews their pro se
17 petition to see whether there's anything there that
18 merits further review and the standard is very
19 liberal to docket or move the petition on to
20 Stage 2. And at Stage 2, even inmates who have no
21 resources whatsoever, which most inmates don't,
22 they are given free counsel. So the second stage
23 takes place and they get counsel to review their
24 case, investigate and draft a petition. And the

1 point of all this is, at the second stage and at
2 the first stage, we are not allowed to attack the
3 substance or credibility of any of these arguments
4 or any of the evidence or affidavits or documents
5 that are put forth.

6 At the second stage we either have to
7 agree to a hearing like this or argue that as a
8 matter of law, even if you believe their
9 affidavits, they simply don't have any right to a
10 PC third stage hearing. So the point I want to
11 make is one that your Honor is well aware of, but
12 that is very significant. Today marks the
13 beginning of the time when we get to attack the
14 evidence for the first time. Vincente has
15 recanted. What wasn't mentioned here was that
16 Vincente is his recantation was given after a
17 number of encounters with people who were very
18 interested in getting his recantation that worked
19 for Northwestern University and their Innocence
20 Projects. And we have documents that show the
21 incentives that were offered.

22 MS. BONJEAN: Objection, your Honor.

23 THE COURT: Overruled.

24 MS. STACK: None of that has been given to your

1 Honor to consider. We have not yet begun this
2 hearing. What you have are documents selected by
3 the defense, gathered together in petitions, and
4 your Honor has to look at those and treat them as
5 if they were true in order to decide whether there
6 is a hearing. We submit they are not true. We
7 submit that Vincente's recantation is very, very
8 clearly the result of manipulation, and Vincente
9 hoping to gain a benefit through that manipulation.
10 We also submit that as far as the 14 unrelated
11 cases, they have another name. They are
12 inadmissible in Illinois, and it's known as prior
13 bad acts or propensity evidence. In 2000 the
14 Supreme Court, because of the Area 2 John Berg
15 scandal, created a remedy where there was a unique
16 pattern. Out of Area 2 you had allegations of
17 electro shock and torture that weren't made in any
18 other area of the city, and to this day have not
19 been made in any other area. And in that case the
20 Supreme Court said that the situation was so unique
21 that fundamental fairness required allowing that
22 all those unrelated cases to be explored because
23 the law is, collateral cases are inadmissible.
24 Otherwise you get into trials within trials that

1 aren't relevant. When we try a criminal case, the
2 issue is, can the State prove the person guilty
3 beyond a reasonable doubt. Do we have evidence to
4 show that the person on trial actually committed
5 the crime? Getting into what other people did is
6 not allowed normally. An exception was made for
7 Area 2. And that exception is now case law.

8 We submit that when you see the witnesses
9 that the defense decides to bring into Court and
10 allow you to see and assess their credibility, you
11 will see that the other witnesses who claim that
12 Guevara engaged in misconduct are incredible. And
13 in many of those other cases, the judges that
14 originally heard those claims in their own trials
15 found them to be incredible. It's an interesting
16 concept where you can take a defendant in his own
17 trial filed a motion, testified his statement was
18 coerced, a Judge found him to be incredible and
19 denied his motion, and now you can bring it over
20 into someone else's case and have it be treated in
21 stages 1 and 2 of the PC as being true. **But we**
22 **submit that when your Honor hears the live**
23 **testimony and examines the full records from these**
24 **14 unrelated cases, you will see that what you have**

1 here is a detective who had a long and busy career.
2 He lived in his area. He worked in his area. He
3 was a gang officer. He knew the gang members and
4 they knew him. And he stayed in that area
5 basically his entire career which lasted for
6 decades. Also, there's another convenient
7 oversight here, and that most of these cases are
8 gang cases. And people that testify in gang cases,
9 witnesses are very brave people indeed. In fact,
10 there is a national media campaign now where star
11 athletes, et cetera --

12 MR. AINSWORTH: Objection, your Honor.

13 MS. BONJEAN: This is irrelevant.

14 THE COURT: Overruled. I am aware of the "no
15 snitch" campaign.

16 MS. STACK: You can take judicial notice then.

17 THE COURT: I am aware of it.

18 MS. STACK: People who stand up to gangs, face
19 special obstacles, your Honor, now that we've
20 reached a point where we can finally challenge the
21 evidence that has been submitted to you on paper
22 only. You will see that the recantation of
23 Francisco Vincente is incredible, ridiculous.
24 Again, we are not trying to retry this case. The

1 arguments again want to retry the case but that is
2 not the purpose for decades if in post-conviction
3 law when defendants try to raise new defenses or at
4 that take the State's evidence the case was kicked
5 out because they were trying to retry the case. In
6 1996 the Illinois Supreme Court created a new claim
7 but placed a very high burden on the defendants. A
8 burden that these defendants cannot meet. They
9 have to have new evidence that is material,
10 conclusive and couldn't have been recovered
11 earlier. Recantations of under oath testimony are
12 inherently reliable. And that is axiomatic comes
13 from justice Brennan in the U.S. Supreme Court.
14 Francisco Vincente's recantation is indeed very
15 incredible, and we expect that when we are allowed
16 to challenge the evidence, you will not only find
17 Francisco Vincente's recantation to be incredible,
18 but whatever witnesses they decide to bring here as
19 concerning the propensity allegations are also
20 incredible. And there's no way that based upon the
21 evidence that they are going to present that they
22 will meet the very high standard of actual
23 innocence or the Patterson issue that there's newly
24 discovered evidence, that fundamental fairness

1 requires a new trial. Thank you.

2 THE COURT: Thank you, Ms. Stack, just to
3 reiterate to all the parties. This is not a
4 retrial. This is the issue of whether or not there
5 should be a new trial or conviction based on that
6 evidence. This is not a re-trial of the facts in
7 this case. This is based on the issue of Patterson
8 and what, the Court has previously ruled.

9 That being said, arguments have been
10 presented, Ms. Bonjean, Mr. Ainsworth, your first
11 witness.

12 MS. BONJEAN: Your Honor, at this point what we
13 will be admitting into evidence are exhibits that
14 have already been admitted into evidence.

15 THE COURT: All right. What exhibit numbers
16 are those?

17 MS. BONJEAN: Your Honor, for the sake of ease
18 -- as your Honor is aware we had extensive
19 hearings. This Court had extensive hearings with
20 Mr. Urdangen and Mr. Ainsworth and myself and the
21 Court ruled on relevancy and admissibility of these
22 exhibits, which is precisely why we were having a
23 hearing. So at this point we are offering into
24 evidence under as permitted under the